



## IOWA GENERAL ASSEMBLY

### Administrative Rules Review Committee

STATEHOUSE \* ROOM 116 \* DES MOINES, IOWA 50319 \* (515) 281-3084/3355  
FAX (515) 281-5995/4424 \* E-MAIL jroyce@legis.state.ia.us

# THE RULES DIGEST

December, 2003

Scheduled for committee review  
Tuesday, December 9<sup>th</sup> and Wednesday, December 10<sup>th</sup> 2003  
Statehouse Room #116

Reference  
XXVI IAB No. 10(11/12/03)  
XXVI IAB No. 11(11/26/03)

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## ADMINISTRATIVE SERVICES DEPARTMENT

Wednesday-10:30

Public records and the Fair Information Practices Act, IAB  
Vol. XXVI, No. 10, ARC 2976B, NOTICE.

This extensive rulemaking is really an update of existing policy rather than a new effort; since this is the first update in many years, it might be useful to review the department's recordkeeping policies. The Fair Information Practices Act (Iowa Code §22.11) was enacted in 1984; it imposes a duty on all state agencies to create policies dealing with "personally identifiable information" in their record systems. The Act required rulemaking by 1988 to identify all of this type of information and to develop procedures for handling that information. Rulemaking was required to:

- Describe the nature and extent of personally identifiable information and the legal authority to keep it. This is detailed in rule 4.14 and .15.
- Describe which records are open for public inspection and which closed. These records are listed in rule 4.13.

- Establish procedures for gaining access to public records, procedures allowing persons to review their own confidential records, and procedures allowing those persons to have those confidential record released. These provisions are found in rule 4.3, .4, .6, .7, and .11.
- Identify whether the agency uses a data processing system which could be interfaced with another system to transfer information.

In 1988 a series of uniform rules were created to standardize a process for requesting information under the Act. The key point in this rulemaking is that public records are open to the public unless access is restricted by Iowa Code §§ 22.8(4) and 22.10(4), or unless the records are confidential by law or by a court order. A fee may be charged sufficient to cover any copying searching or supervising costs incurred by the department.

**ADMINISTRATIVE SERVICES  
DEPARTMENT**  
Wednesday-10:30

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Purchasing, IAB Vol. XXVI, No. 09, ARC 2708B, ADOPTED.

These adopted provisions have been previously reviewed by the committee in September and November. Many of the issues presented in the initial notice have now been resolved. The remaining controversy involves the concepts of “sole source procurement” and the use of master contracts in making state purchases. Under this concept the department may establish a price for a particular item through a bidding process, enter into a master contract with the winning vendor and state agencies may then simply buy those items as needed at the contract price. These master contracts can cover anything from office supplies to sophisticated and expensive systems.

The department denies this practice is a form of sole procurement, noting that a bidding process was used to establish the initial price for the item.

One commentator states that in the area of technology it is relatively easy to obtain compatible products and services from a variety of vendors, and that greater savings would be possible through competitive bidding for *each* large project. Department representatives responded that the use of a master contract is cost effective. The representatives noted that savings are achieved by obtaining a lower price through the establishment of master contact with the anticipation of a larger volume of purchases from the contract and the elimination of the cost of the time needed to go through a complete bidding process for each individual purchase.

At the November ARRC meeting committee members were concerned that relatively large purchases could be made without a specific bid for each purpose, but determined to postpone further review until the December meeting in order to allowed interested persons an opportunity to discuss this issue in more detail.

### AGRICULTURE DEPARTMENT

Tuesday-8:50

Farm deer, IAB Vol. XXVI, No. 11, ARC 2976B, ADOPTED.

Similar rules were adopted on an “emergency” basis and reviewed by the committee in October. The department now adopts this filing, with changes, to replace that “emergency” rule.

House File 624 specifically establishes the principle that farm deer are livestock and are “principally” regulated by the Department of Agriculture and Land Stewardship; the Act has transferred the regulation of farm deer from the Department of Natural Resources to the Department of Agriculture. The Act specifically empowers the department to adopt rules relating to the importation, transportation, and disease control of farm deer. Farm deer can include fallow, mule or white tail deer, sika and elk. The term does not include any free range animals. Currently there are six hunting preserves and 300 breeders.

H.F. 624 establishes a farm deer council within the department. This advisory group monitors the production and monitoring of farm deer and advises the department concerning health issues relating to farm deer and the administration of this program generally.

The transfer of authority has not caused a significant change in the actual regulation---except for the various fees required. Under prior statute (§484B.4) the licensing fee was \$200; this is now raised to \$1000. Inspection fees for new fencing are set at \$35 per hour and veterinary inspection fees at \$50 per hour. An annual chronic wasting disease fee of \$100 is also imposed. All fees collected by the department under this chapter are retained by the department to pay for the costs of administering this program and other programs relating to farm deer.

### AGRICULTURE DEPARTMENT

Tuesday-8:50

Feeder pig sales & movement, IAB Vol. XXVI, No. 11, ARC 2976B, ADOPTED.

2003 Iowa Acts, House File 617 establishes an expanded financial surety requirement for feeder pig dealers; this surety must be either a bond or an irrevocable letter of credit. It is intended to provide a secured asset for the recovery of damages incurred by a feeder pig purchaser who suffers

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damages because of sick or diseased pigs obtained from a feeder pig dealer. Previous law required a surety bond of \$10,000 as a condition of licensure. Under the Act licensees must now give evidence of financial responsibility, in the form of a larger surety bond. The amount of the bond varies with the volume of business by each individual dealer.

The bond must be at least \$50,000 and not more than \$300,000. The rules themselves are not particularly controversial, but the surety requirements are controversial. Commentators contend that the surety bonds are extremely difficult to obtain at an affordable cost.

### ECONOMIC DEVELOPMENT DEPARTMENT

Wednesday-8:50

University-Based Research Utilization Program, IAB Vol. XXVI, No. 10, ARC 2976B, NOTICE.

House File 692 calls on the department to create a program to assist Iowa business in making university research, particularly high-tech research, available for commercial development. Participating businesses and university employees may receive a tax credit. The total aggregate value of the credits issued over a 5 year period to an approved business cannot exceed \$600,000.

For the approved business, the value of the tax credit equals 30% of the tax liability of the business, up to \$225,000. For the university employee the value of the credit equals 10% of the tax liability for the business.

For the employing Regents institution the department will annually make a determination of calculate 30% percent of the tax liability of the approved company; this amount will then be appropriated to the institution budget from the general fund of the state. An appropriation cannot exceed \$250,000 per year for each patented technology or exceed \$600,000 over five years.

An Iowa business utilizing technology developed by an employee in a Regents institution may apply for assistance if:

- The technology has received a patent. Companies in existence for more than one year must spin off a separate company to utilize the technology;
- The company has developed a five year plan, approved by the department;
- The company must have at least one full-time equivalent employee or will have at least two full-time equivalent employees within one year of approval of the application; and,
- The company provides annual reports to the department including employment statistics for the company and the total taxable wages paid to Iowa employees.

The Department of Revenue has adopted a companion set of rules, which appear as ARC 2953B, published as a notice in the 11/26/03 IAB.

### EDUCATIONAL EXAMINERS BOARD Tuesday-3:10

Mandatory reporting concerning misconduct, IAB Vol. XXVI, No. 10, ARC 2929B, NOTICE.

At one time the boards authority to consider licensee discipline was largely limited to actual complaints made to the board by local districts or parents. Over the last ten years the boards authority to initiate action on its own motion has increased, to the extent that now the Educational Examiners Board has similar authority to that held by other professional boards.

House File 549 is another step in expanding the discretion of the board; it requires that local districts report to the board the nonrenewal, termination, or resignation of educators or administrators "*for reasons of alleged or actual misconduct*". Under the Act the term misconduct is tied to a long list of acts detailed in Iowa Code §272.2(14)"b"; they relate to sexual offenses. These reports are kept confidential; the information is not admissible in evidence in any legal proceeding other than licensee discipline. The board will then consider this information to determine whether a licensing disciplinary proceeding should be instituted.

Under the proposed rules the report must be filed within 60 days of the action, using forms established by the board; the executive director of the board shall review the information reported to

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determine whether a complaint investigation should be initiated. In making this determination the rule sets out a number of factors to be considered:

- the nature and seriousness of the reported misconduct in relation to the position sought or held,
- the time elapsed since the misconduct, the degree of rehabilitation,
- the likelihood that the individual will commit the same misconduct again,
- and the number of reported incidents of misconduct.

### ETHICS BOARD

Wednesday-10:00

Executive branch lobbying, IAB Vol. XXVI, No. 11, ARC 2964B, ADOPTED.

The board adopts a new chapter 8, revising rules relating to executive branch lobbying. The new language distills the statutory definition of “lobbyist” and the variety of exclusions from that term as detailed in Iowa Code §68B.2(13). The filing contains a significant amount of detail concerning registration, reporting and the penalties that may be imposed. It also sets out general guidelines to help define reportable expenses, these include:

- Direct communication expenses.
- Time spent researching and drafting proposed legislation, rules, or executive orders.
- Time spent by the lobbyist communicating with executive branch officials and employees for purposes of engaging in executive branch lobbying.

Such expenses are reportable when performed either by the lobbyist or the client. However, organizational newsletters or other informational releases to organization members are not reportable expenses.

The prior rule established a brief code of ethics; this code is now scrapped in favor of a provision providing specific guidance in a number of areas. The current prohibition against accepting a contingent fee is retained. The prohibition on contributions during the legislative session (§56.15A) is explained in detail, along with three exceptions. The prohibition against making loans (§68B.24) and the “ordinary course of business” exception is explained. Also, a significant amount

of detail is provided concerning the ban on certain lobbying activities by government personnel (§68B.5A). Lastly, the proposal outlines the prohibition against make false statements or communications.

### GROW IOWA VALUES BOARD

Tuesday-9:20

Organization & operation, IAB Vol. XXVI, No. 10, ARC 2917B, EMERGENCY AFTER NOTICE.

Earlier versions board rules have been reviewed at the committees August and October meeting. Although a notice of intended action was published in September, the need to have these rules effective by November necessitated an emergency filing after that notice. The organization of this program is detailed in statute; the board itself is made up of eleven members chosen by the Governor and four ex-officio legislative members. In essence the board selects projects for funding. The Due Diligence Committee is made up of five members of the board. The committees’ responsibility is to thoroughly review applications to determine whether a project is practicable. The committee is to make a recommendation to the board based on the achievability of performance measures established by the committee.

The Grow Iowa Review Commission is a three member board housed in the Auditor’s office. The Governor, Auditor and the Legislative Council each appoint a member. The Commission will analyze all reports of the Value Board and determine whether the goals and performance measures have been met. By January 1<sup>st</sup>, 2007 it will submit a report with its findings and its recommendations as to the continuation, elimination or modification of the program.

The Economic Development Marketing board is made up of seven members appointed by the Governor and is charged to develop strategies to market Iowa as a lifestyle, increase the population and wealth of Iowa and to expand the state economy. The strategies must be approved by the board and will be developed by the Department of economic development.

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The keystone of the entire program are the eight performance standards set out in §83 of the Act. Using 2002 as a baseline, H.F. 692 the Act sets the following standards:

- (1) *A net increase in a business's supplier network.*
- (2) *A net increase in business start-ups.*
- (3) *A net increase in business expansion.*
- (4) *A net increase in business modernization.*
- (5) *A net increase in attracting new businesses to the state.*
- (6) *A net increase in business retention.*
- (7) *A net increase in job creation and retention.*
- (8) *A decrease in Iowa of the ratio of the government employment.*

As set out in the Act and chapter one of the board rules the statutory purpose of the grow Iowa values fund is to expand and stimulate the state economy, increase the wealth of Iowans, and increase the population of the state. The fund will provide financial assistance for business start-ups, business expansions, business modernization, business attraction, business retention and marketing. Portions of the fund may also be used for the value-added agricultural products and processes financial assistance program, and the CEBA program. The final adopted rule expands this list of eligible programs, allowing the board to allocate funds for the Entrepreneurial Ventures Assistance (EVA) Program, the Targeted Small Business Financial Assistance Program (TSBFAP), and other department programs.

A major addition to these adopted rules is the wage requirement set out in subrule 3.2(2). Under this addition 50% or more of the jobs must start at 110 percent of the average county wage or average regional wage, whichever is lower. The actual amount of the award will be based on the average wage of those jobs that meet or exceed the following wage requirements. The subrule sets out a sliding scale increasing the per job award as the wage percentage exceeds 110%.

### HUMAN SERVICES DEPARTMENT

**Tuesday-11:00**

Subsidized adoptions, IAB Vol. XXVI, No. 09, ARC 2900B, ADOPTED/70 day delay.

The adoption subsidy program encourages the adoption of special needs children by providing a variety of benefits. "Special needs" children include:

- a Caucasian child who is age 8 or older.
- a minority or multiracial child of any age.
- a child of any age with a physical or mental disability
- a child of any age with emotional or behavioral problems
- a child of any age who is developmentally disabled
- a sibling group of three or more children, to be placed together
- a sibling group of two children one of whom has special needs to be placed together

Proposed changes in this program are intended to save some \$400,000. At its' November meeting the Committee imposed a temporary delay to allow additional time for analysis and discussion of this rule at the December meeting.

The changes include:

- Eliminating minority children under two years of age and children who are "at risk" of having mental retardation or a disability from the list of "special needs". Department representatives note that is no longer difficult to place younger minority children. If "at risk" children ultimately develop a disability, they will be subsidized at that time.
- Requiring that a child care subsidy be limited to meeting the special needs of the child. This concept not all child care expenses would be met by the program; instead, the program would meet only those costs directly related to the disability.
- Eliminating the addition of \$1 per day to the maintenance subsidy for a sibling group of three or more children, but add a one-time payment of up to \$500 per sibling at the time of payment.

In response to public comment the department has agreed to make these changes applicable to new adoptions only, leaving current benefit packages intact.

### IOWA FINANCE AUTHORITY

**Tuesday-1:40**

State housing trust, IAB Vol. XXVI, No. 11, ARC 2972B, ADOPTED.

Senate File 458, §101 creates a "housing trust fund" within the IFA, for the development and

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preservation of affordable housing for low-income people. Money in the fund does not revert to the general fund. The fund consists of two programs: the local housing trust fund and the project based program. For each program applications are evaluated based on a series of weighted criteria, set out in the program.

60% of the fund (\$480,000) is to be allocated to the local housing trust. A local fund must have a local governing board responsible for coordinating local housing programs as recognized by the city, county, council of government or regional officials. No single award can exceed 10% of the balance of the fund, plus 10% of any deposits. In geographic areas of 100,000 or more population, awards may be up to \$200,000; for smaller areas the awards are limited to \$100,000. 40% of the moneys must serve extremely low-income people (30% of the *greater* of the county or the statewide metro or nonmetro median income). This requirement can be met through assistance to homeless or domestic violence shelters, transitional housing projects, housing for persons with disabilities, etc. A 25% local match is required.

40% of the fund is allocated to project based programs (\$320,000). The programs must be sponsored by local governments or non-profit organizations for the purpose of developing and preserving single and multi-family housing for low-income persons (80% of the median income). Owner-occupied rehabilitation is not eligible under this program. A 10% local match is required.

### IOWA LAW ENFORCEMENT ACADEMY

**Wednesday-9:30**

Certification of officers, IAB Vol. XXVI, No. 11, ARC 2944B, ADOPTED.

Two recently enacted measures allow individuals to pursue training as law enforcement officers at their own expense. Pursuant to S.F. 352 an individual who is sponsored by a law enforcement agency and has completed a two-year or four-year police science or criminal justice program at an accredited Iowa educational institution may apply for a short course of study at

an approved law enforcement training program. The sponsoring agency must agree to hire or have already hired the individual. That individual must also meet all the minimum hiring standards established by the academy. Senate File 453 creates a similar policy for individuals wishing to attend the academy itself.

There were a number of controversies when these rules were initially reviewed in August. Representatives of several Iowa community colleges contended that various filing and testing requirements imposed unnecessary roadblocks and expenses that discourage applicants from seeking training at community colleges. The issues included:

- A 60 day application requirement. Opponents contended this made it very difficult for applicants to attend the fall, 2003 class. The length of time is changed to 30 days if the hiring standards are conducted by the sponsoring agency and 60 days if the hiring standards are conducted by the Academy.
- The \$50 administration fee. Opponents contended this fee placed an additional financial burden on applicants who already had committed to paying the cost of instruction. This fee remains in place.
- The "MMPI" psychological test. Opponents contended this expensive test was unnecessary, noting that the applicant may have to re-take the test again unless hired within eight months of graduation. The rule was changed to require that the MMPI and POST testing must be reverified only if the individual is not hired or placed upon a civil service certified list within the first 12 months following completion of the course of study.

Those issues now appear to have been largely resolved in the final adoption.

### PUBLIC HEALTH DEPARTMENT **Tuesday-3:00**

Volunteer health care provider, IAB Vol. XXVI, No. 11, ARC 2975B, NOTICE.

This program, first implemented almost ten years ago, is being generally updated. Pursuant to Iowa Code §135.24 certain health care providers may be given immunity from civil liability when providing voluntary, free medical or dental services. Under this program the state will defend

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and indemnify a volunteer health care provider or a free clinic for a claim arising from the operation of that program. The rules establish the general framework for participation. Providers include hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations, free medical, dental, and chiropractic services. House File 557 now adds psychologists, master social workers, independent social workers, marital and family therapists, mental health counselors, and pharmacists to the list of eligible providers.